S.B. Civil Revision Petition No.330/2004

Municipal Board, Banswara
vs
Smt. Mahesh Chandra

DATE OF ORDER : - 8.10.2004

HON'BLE MR. PRAKASH TATIA,J.

Mr.M.C.Bhoot, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner is aggrieved against the order dated 13th Sept., 2004 by which the trial court refused to accept the counter claim of the defendant.

It appears from the facts that in a suit filed against the petitioner, the evidence of the parties were closed on 11th Sept., 2003 and the case was fixed for final arguments on 27th Sept., 2003. The defendant-petitioner at this stage submitted counter claim on 4th Nov., 2003. The suit of the plaintiff had valuation of Rs.400/-. The plaintiff's suit was pending in the court of Civil Judge (JD), which has jurisdiction to entertain the suit upto the valuation of Rs.25,000/-. In that suit, the defendants submitted the counter claim valuing his counter claim of Rs.2,11,000/- for which the trial court had no pecuniary

jurisdiction. The trial court even though the defendant's right to submit defence came to an end after filling the written statement and after the closer of evidence of the defendant and without appreciating the fact that if the counter claim is taken on record at this stage, not only there will be complete de novo trial in a suit, which is at final stage, further ignored that at this stage, entire nature of the suit will enlarge, took the counter claim on record. Interestingly, not only by ignoring all above, the trial court after taking on record the counter claim, returned it for presentation in court having pecuniary jurisdiction to hear and decide the counter claim under assumption that a counter claim can be tried in another court, other than where the suit is pending. If suit and counter claim were to be decided by two courts then what was reason for the trial court to permit filling of the counter claim at this belated stage of final argument, was not considered by the trial court. Be that as it may, on application of defendant, the suit of the plaintiff was transferred from the court of Civil Judge (JD) to the court of Addl. District Judge (Fast Track). The plaintiff aggrieved against transfer of his case to court of higher pecuniary jurisdiction. According to plaintiff, the suit of the plaintiff got transferred by defendant to make the defendant's counter claim maintainable and to get opportunity to produce evidence in a case in which trial has already been concluded.

The files of the counter claim as well as of the original suit was called by this court in S.B.Civil Misc. Transfer Petition No.06/2004 wherein after taking note of all the facts, this court observed that the plaintiff shall have right to raise objection about the acceptance of the counter claim. On this observation, the plaintiff submitted objection about the maintainability of the counter claim. The stay application was allowed by the trail court vide order dated 13th Sept., 2004.

Learned counsel for the petitioner submits that the defendant can file counter claim at any time and there is no time limit for filing the counter claim. Learned counsel for the petitioner further submits that since the suit has been transferred in the court of higher jurisdiction, therefore, the counter claim could have been entertained. He also submits that there will be no prejudice to the plaintiff if the counter claim is taken on record.

It appears that the petitioner to over come all the proceedings taken by the trial court upto the stage of final arguments, has filed the counter claim. This itself should have been accepted as good ground for refusal to accept the counter claim apart from the reasons given by the trial court. In facts mentioned above it is clear that petitioner want to abuse the process of the court by adopting the procedure for getting opportunity to plead facts after

closer of the evidence of both the parties and further has filed the counter claim to produce evidence after closer of his evidence.

In the facts and circumstances of this case, I find no merit in the present revision petition. Hence, the revision petition of the petitioner is dismissed.

(Prakash Tatia), J.

c.p.goyal/-